

## **SUPPLEMENTAL AGREEMENT NUMBER TWO**

This AGREEMENT made and entered into as of June 22, 2007 by and between THE UNITED STATES OF AMERICA, acting by and through the GENERAL SERVICES ADMINISTRATION ("GSA") and THE SMITHSONIAN INSTITUTION, a trust instrumentality of the United States of America ("SI").

WHEREAS, GSA and SI entered into an Agreement of Lease dated October 20, 1992 (the "Lease") with respect to the SI's occupancy as a tenant of the United States Custom House located at 1 Bowling Green, New York, New York (the "Building"); and

WHEREAS, the GSA portion of the fire protection system in the Building is currently in violation of Section 8.3.3.1 of National Fire Protection Association ("NFPA") 25, which states that "an annual test of each pump assembly shall be conducted under minimum, rated, and peak flows of the fire pump by controlling the quantity of water discharged through approved test devices"; and

WHEREAS, the SI portion of the fire protection system in the Building is in compliance with the applicable code requirements; and

WHEREAS, a "test header" is the approved test device required to conduct full flow tests to verify operation of the Building's fire pump as required by NFPA requirements; and

WHEREAS, the SI currently has sprinkler system piping installed within their leased premises which runs to an existing test header installed by the SI located on the exterior of the Building; and

WHEREAS, GSA and SI agree that it is potentially technically feasible for GSA to share the existing SI test header on the exterior of the Building for GSA testing of the existing GSA fire pump, as well as SI testing of the sprinklers within the SI space; and

WHEREAS, utilization of the existing SI test header would be accomplished by GSA connecting ("tying in") new sprinkler piping into existing piping servicing the SI sprinkler system test header; and

WHEREAS, SI and GSA agree that the possible joint use of the existing SI piping and test header will alleviate GSA from the responsibility of installing hundreds of linear feet of new piping, and will eliminate the requirement for GSA to install a new, second test header on the Building; and

WHEREAS, GSA and SI also agree that the installation of a new, second test header on the exterior of the Building would be an unnecessary intrusion onto the monumental façade of this historic structure; and

WHEREAS, the parties hereto desire to amend the Lease;

NOW THEREFORE, for in consideration of the foregoing and of the covenants and agreements herein contained, the parties hereby agree as follows:

1. GSA will engage the services of an AE firm at GSA's sole expense to provide a fire protection engineer to determine the feasibility of connecting piping from the existing GSA fire pump to the existing piping that feeds the existing SI test header.
2. If the fire protection engineer determines that connecting the piping is feasible and GSA and SI agree, GSA's AE firm will develop specifications and drawings to accomplish this task.
3. GSA will provide SI with an opportunity to review, comment on, and approve the specifications and drawings for the project. Until such approval by SI is provided in writing, no modifications to piping shall occur.
4. GSA will provide its own test valves to attach to the existing SI test header during initial testing. SI will retain their existing test valves.
5. After initial testing of the GSA equipment, GSA will be responsible for draining all piping and replacing caps on the existing SI test header, and for repairing at GSA's sole expense any damage to the piping, fitting and other equipment resulting from the initial testing.
6. If the initial testing results in any water damage to any part of SI's leasehold premises and/or SI collections and property, GSA shall pay for prompt and complete repair, restoration, conservation or other work necessary to remedy the damage.
7. If the initial testing is successful and the parties agree in writing to proceed with the long-term tying in of new sprinkler piping into existing SI piping, (i) GSA will provide and maintain at its sole cost and expense all piping, valves (including an OS&Y control valve) and fittings from the existing GSA fire pump up to and including the tie-in to the existing SI test header piping. GSA recognizes that the existing SI test header piping is flanged, with welded fittings. Although GSA will be using new piping with victaulic connections, GSA will ensure that the connection between the existing SI piping and the new GSA piping is made according to all applicable codes in order to ensure that there are no leaks, and GSA will maintain such connections to ensure that no leaks occur. GSA will be solely responsible for repairing any leaks which may develop on either the GSA piping or at the connection point to the SI piping. If any such leaks cause damage to SI piping, fitting and other equipment, or water damage to the SI leasehold premises or SI collections and property, GSA shall be solely responsible for the costs of all such repairs, restoration, conservation or other work necessary to remedy the damage. .  
  
(ii) SI will provide and be responsible for all piping, fittings, and valves (excluding the GSA provided test header valves) from the GSA tie in up to and including the SI test header, including routine maintenance of such equipment.

(iii) Both GSA and SI agree to inspect and maintain their portions of the test header piping, fittings, valves, and associated equipment per NFPA 25, **Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems**.

8. GSA will coordinate the date and time of annual full flow tests with SI's facility manager and notify appropriate New York City authorities so that they may close the adjacent street for testing.
9. If, as a result of the annual tests or routine maintenance, repair work must be completed on a particular portion of the piping or other equipment, the party whose portion of the piping, fittings, valves and associated equipment requires repair shall be solely responsible for completing such repairs in a timely manner, but in no event later than 30 days after the deficiency is identified. If either party unreasonably delays in its obligation to repair its portion of the piping and other equipment, the other party may undertake the repair and charge the responsible party for the cost of such repair. Repeated failure to conduct repairs in a timely manner shall be grounds for either party to terminate this Supplemental Agreement Number Two and disconnect the piping.
10. GSA will send confirmation that testing is complete and the system is returned to normal to SI's facility manager.
11. Nothing in this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Sec. 1341, or other applicable law.
12. This Agreement may only be amended in writing signed by the authorized representatives of both parties.
13. All other terms, provisions, covenants and conditions of the Lease not inconsistent herewith shall remain in full force and effect.

IN WITNESS WHEREOF, GSA and SI have executed this Agreement as of the day and year first above written.

GENERAL SERVICES ADMINISTRATION

By John N. Marcic  
Contracting Officer

Date: June 19, 2007

SMITHSONIAN INSTITUTION  
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Dorothy A. Leffler  
Contracting Officer

Date: 6/24/07



# Smithsonian Institution

Office of the Chief Financial Officer  
Office of Contracting

June 25, 2007

John N. Marcic  
Contracting Officer  
Portfolio Management Division  
Public Buildings Service  
General Services Administration  
Room 1609  
26 federal Plaza, NY 10278

Dear Mr. Marcic:

This letter regards that certain Supplemental Agreement Number Two by and between you and the Smithsonian Institution. Enclosed find a fully-executed original of the document for your files.

If you should have any questions, please feel free to contact me at 202-633-7303.

Sincerely,

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Cindy Zarate  
Contract Negotiator-Attorney

Enclosures (2)

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